In the High Court of Punjab and Haryana, at Chandigarh.

Criminal Appeal No. 1002-SB of 1997

Date of Decision: 9.4.2008

Babu Lal

…Appellant

Versus

State of U.T. Chandigarh.

…Respondent

CORAM: HON'BLE MR. JUSTICE KANWALJIT SINGH AHLUWALIA.

Present: Mr. Sandeep Jasuja, Advocate
for the appellant.

None for the respondent.

Kanwaljit Singh Ahluwalia, J.

Appellant Babu Lal son of Ram Udit has filed the present criminal appeal on being aggrieved against the judgment dated 28.11.1997 passed by learned Special Judge, Chandigarh, whereby he has been convicted under Section 7 of the Essential Commodities Act, 1955 (for short "the Act 1955") and sentenced to undergo rigorous imprisonment for two years and pay a fine of Rs.1,000/-. In default of payment of fine to further undergo rigorous imprisonment for three months.

Babu Lal appellant was charged by learned Special Judge, Chandigarh on 7.5.1996. That in the area of Motor Market, Manimajra, on 9.11.1994 he was found in possession of one half drum having 30 liters of kerosene oil, along with one measurement of five liters and one funnel for the purpose selling of kerosene oil without any valid licence in

contravention of the provisions of Punjab Kerosene Dealers Licensing Order, 1966 (as applicable to Union Territory, Chandigarh) (for short "the Order 1966"), and thereby he had committed an offence punishable under Section 7 of the Act 1955.

Briefly stated, Deep Singh Sandhu, Inspector, Food and Supplies Department, U.T. Chandigarh, sent a written complaint to the Station House Officer, Police Station Manimajra that as directed by the District Food and Supplies Officer, U.T. Chandigarh, in order to supervise the sale of public distribution of kerosene oil at Manimajra, he along with Sarv Shri Amar Nath, Kamal Kailash and S.P.Manchanda, Inspectors, Food and Supplies Department, U.T. Chandigarh, along with police assistance headed by Sub Inspector Dilbag Singh, and staff visited the Motor Market Complex on 9.11.1994 between 3.00 P.M. to 4.30 P.M. During the course of checking, it was found that the persons, namely Kalu Ram, Babu Lal, Pawan Kumar, Bholla Singh and Chotu have stored and have been selling public distribution system kerosene oil without having any valid licence in contravention of the Order 1966.

After FIR was investigated, report under Section 173 Cr.P.C. was submitted, and as stated above charge was framed.

Prosecution examined Deep Singh Sandhu, Inspector, Food and Supplies Department, U.T. Chandigarh, as PW.1. In his examination-in-chief he stated that his statement was recorded by the police. It is further stated that it was not the case that the accused and other persons were apprehended in the absence of police by himself and associate Inspectors and after the recoveries from them, he went to the Police Station and brought the police at the spot. He was declared

hostile by learned Public Prosecutor and was cross-examined. He denied the suggestion put up by learned Public Prosecutor that the accused present in the Court and the other persons were apprehended by him and other Inspectors in the area of Motor Market, Manimajra.

S.P.Manchanda, Inspector, Food & Supplies Department, U.T. Chandigarh was examined as PW.2. He reiterated the version given in the FIR. But he admitted in cross-examination that there were no written orders conveyed to them by the District Food and Supplies Officer, U.T. Chandigarh, for conducting raid. He admitted that the place of raid is busy market and there are many shops. He further admitted that nobody has collected at the place of apprehension of the accused and his companions. He further admitted that no person from the public was associated by the police party. It was further stated by him that the raiding party did not see the accused actually selling kerosene oil to anybody.

Shiv Kumar Nishad was examined as PW.3, who stated that he knew Babu Singh accused present in the Court and further stated that accused deals in the sale of kerosene oil in black and he himself purchased kerosene oil from him five or six liters.

Jaswant Singh, PW.4, is a Draftsman, who prepared the scaled plan Ex.PW.4/A.

Head Constable Daljit Singh, PW.5, produced the copy of DDR No. 32 dated 9.11.1994 Ex.PW5/A.

Constable Mohinder Singh, PW.6, has filed his duly sworn affidavit Ex.PW.6/A.

Head Constable Ranbir Singh, PW.7, has also filed by duly

sworn affidavit Ex.PW.7/A.

Sakattar Singh, Moharrir Head Constable, PW.8, has also produced copies of DDR No. 32, which is Ex.PW.8/A.

Sub Inspector Karnail Singh, PW.9, has stated that on 9.11.1994 he received ruqa Ex.PC/1 on the basis of which he recorded the FIR Ex.PG/2.

Sakattar Singh, Moharrir Head Constable, was again examined as PW.9, who has also produced copies of DDR Nos. 27 and 32, respectively, which are Ex.PW.9/A and Ex.PW.9/B.

Sub Inspector Dilbag Singh, PW.10, is the Investigating Officer of the case.

The incriminating evidence was put to the accused/appellant. He denied the same and stated that he has been falsely implicated in the case.

Twofold submissions have been made before me. It has been stated that Deep Singh Sandhu, PW.1 has been declared hostile and there are material discrepancies between his testimony and that of S.P.Manchanda, PW.2, regarding the mode of registration of case and calling of police to the spot. It has been further stated that Shiv Kumar Nishad, PW.3, is not only inimical witness but is conveniently available to the police, therefore, no reliance can be placed on his testimony.

This Court cannot loose sight of the fact that in the present case, along with kerosene oil recovered, there was recovery of one measurement of capacity of five liters along with one funnel, therefore, the kerosene oil was used for sale.

It has been contended before me that on 2.9.1993 the Order

1966 has been superseded by the Kerosene (Restriction on Use and Fixation of Ceiling Price) Order, 1993 (for short “the Order 1993”), whereby along with dealer a parallel marketing system has been introduced. My attention has been drawn to Clause 2(i) of the Order 1993, where a parallel marketing system has been defined as a system, other than the public distribution system, under which a person imports kerosene, or stores, transports, packs distributes or sells imported kerosene, under his own arrangement.

Clause 2(j) has defined public distribution system as a system of distribution, marketing or selling of kerosene at declared price through a distribution system approved by the Central or State Government.

Under Clause 3 of the Order 1993, restriction has been put on selling of kerosene oil supplied under the public distribution system. It has been stated under Clause 3 of the Order 1993 that no person shall use kerosene oil supplied under the public distribution system for any purpose other than cooking and illumination. It has been further stated that no dealer appointed under the public distribution system or transporter shall sell, distribute or supply kerosene oil under the public distribution system to any person other than the person to whom the supplies are meant for.

It has been further stated in Clause 8 of the Order 1993 that kerosene oil under public distribution system is to be made distinguishable from the kerosene oil sold under parallel marketing system.

Learned counsel for the appellant has stated that two different

colours have been assigned to the kerosene oil, one sold under the public distribution system and the other sold under the parallel marketing system. It has been further stated that by enactment of the Order 1993, the Order 1966 stood repealed and the same has been made applicable to Union Territory, Chandigarh.

I am in agreement with learned counsel for the appellant that prosecution has nowhere stated that the kerosene oil, which was recovered from the possession of the appellant, was not belonging to parallel marketing system. It was mandatory for the prosecution to prove that the kerosene oil, which was recovered from the appellant, belongs to public distribution system.

It was required by the prosecution to prove that kerosene oil, which has been recovered from the appellant, belongs to public distribution system. Since on this score, the prosecution has failed and even from the report of Central Forensic Science Laboratory, whereby the sample Ex.P3 was sent, the colour of the kerosene oil has not been proved from which it can be deciphered whether the kerosene oil recovered from the appellant belongs to parallel marketing system or to public distribution system, benefit of doubt is to be granted to the appellant and, therefore, the present appeal is accepted and appellant is acquitted of the charges.

(Kanwaljit Singh Ahluwalia)
Judge

April 9, 2008
"DK"